

ENTERED

December 18, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MICHAEL CARDORA ROBERSON,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 2:20-CV-223
	§	
EVELYN CASTRO, <i>et al.</i> ,	§	
	§	
Defendants.	§	

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Plaintiff Michael Cardora Roberson (“Plaintiff”) filed this action pursuant to 18 U.S.C. § 1983 while he was housed at the McConnell Unit in Bee County, Texas against various McConnell Unit prison officials (“Defendants”). (D.E. 1; D.E. 14). He claims that Defendants’ alleged failure to protect him against threats endangering his life was a violation of his Eighth Amendment rights. (D.E. 1; D.E. 14).

Before the Court is Magistrate Judge Jason Libby’s Memorandum and Recommendation (“M&R”). (D.E. 14). In the M&R, Judge Libby states that Plaintiff has had three prior actions dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted, thereby barring Plaintiff from filing this civil suit *in forma pauperis* unless Plaintiff was in imminent danger of physical injury at the time he filed this action. *Id.* at 4; *Choyce v. Dominguez*, 160 F.3d 1068, 1071 (5th Cir. 1998) (per curiam) (citing *Baños v. O’Guin*, 144 F.3d 883, 884–85 (5th Cir. 1998) (per curiam)). After reviewing the complaint (D.E. 1) and conducting a *Spears* hearing on October 14, 2020, Judge Libby found that Plaintiff failed to meet the imminent danger test set forth in 28

U.S.C. § 1915. (D.E. 14, p. 5). As a result, Judge Libby vacated the order granting Plaintiff's application to proceed *in forma pauperis* and recommends that this Court dismiss the case because it is barred by the three strikes rule set forth in § 1915(g). (D.E. 14; *see* D.E. 15).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); General Order No. 2002-13. Plaintiff timely filed objections to the M&R. (D.E. 17). Having carefully reviewed the proposed findings and conclusions of the M&R, the record, the applicable law, and having made a de novo review of the portions of the M&R to which Plaintiff's objections were directed, 28 U.S.C. § 636(b)(1), the Court **OVERRULES** Plaintiff's objections. (D.E. 17). Accordingly, the Court:

(1) **ADOPTS** the M&R in its entirety. (D.E. 14).

(2) **DISMISSES** the case in its entirety.

Plaintiff is currently housed at the Connally Unit located in Karnes County Texas, which is in the San Antonio Division of the Western District of Texas. (D.E. 14, p. 5 n.2). As the M&R explains, if Plaintiff seeks to overcome the three strikes bar in connection with his current confinement, he may file a separate action in the San Antonio division of the Western District of Texas. *Id.*

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
December 17, 2020